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KAVINDRA SUPPIAH v. PP

COURT OF APPEAL, PUTRAJAYA
MOHD NAZLAN GHAZALI JCA
AZMI ARIFFIN JCA
CHOO KAH SING JCA
B [CRIMINAL APPEAL NO: W-05-353-09-2023]
10 SEPTEMBER 2025

Abstract – *(i) In granting a forfeiture order under s. 56 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUAA'), a prior conviction for a serious offence is not required. The High Court need only determine whether the seized property falls within any of the statutory categories set out in s. 56(1) and 56(2). The essential requirement is that there is sufficient evidence to satisfy the court that an unlawful activity has been committed and that the property sought to be forfeited is connected to or derived from that unlawful activity; (ii) Under s. 61(4) of the AMLATFPUAA, the burden is on the third party to establish, on a balance of probabilities, his entitlement to the seized property. Bare assertions regarding his financial status are insufficient to discharge this burden; (iii) Statements recorded under s. 37B of the Dangerous Drugs Act 1952 and s. 32 of the AMLATFPUAA are admissible in forfeiture proceedings by virtue of ss. 71 and 40 of the AMLATFPUAA. These statements – like those under s. 112 of the Criminal Procedure Code – are admissible because forfeiture proceedings under s. 56 are quasi-criminal in nature which focuses on determining whether the property is connected to an unlawful activity.*

CRIMINAL PROCEDURE: *Forfeiture – Principles governing – Forfeiture order granted under s. 56 of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUAA') – Whether seized properties fell within any of categories or situations mentioned in s. 56(1) and (2) of AMLATFPUAA – Applicable standard of proof – Whether conviction of serious offence under AMLATFPUAA prerequisite in granting forfeiture order – Whether forfeiture order could be based on s. 39B of Dangerous Drugs Act 1952, and not s. 6 of DDA, which accused was convicted with – Difference between 'unlawful activity' and 'serious offence' within scheme of AMLATFPUAA*

CRIMINAL PROCEDURE: *Forfeiture – Principles governing – Third party claimed ownership over property sought to be forfeited – Whether third party successfully proven, on balance of probabilities, seized property belonged to him – Whether mere assertion of financial status suffice to discharge burden of proof*

CRIMINAL PROCEDURE: *Forfeiture - Principles governing – Admissibility of statements of accused recorded under s. 37B of Dangerous Drugs Act 1952 and s. 32 of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUAA') – Whether admissible under ss. 71 and 40 of AMLATFPUAA*

Following a raid conducted by the Royal Malaysian Customs Department ('Customs'), a parcel containing four packages of cannabis was found and recovered from a white Honda CRZ ('car') belonging to the appellant. After the appellant was arrested, he led the Customs to his residence, where the officers found and recovered a cash sum of RM90,000 ('cash') from a wardrobe located in the appellant's bedroom. At the High Court, the appellant was charged under s. 39B of the Dangerous Drugs Act 1952 ('DDA') for the offence of trafficking in dangerous drugs. However, after the appellant pleaded guilty, the charge was reduced and amended to a lesser charge of possession of cannabis under s. 6 of the DDA. The appellant was subsequently convicted under the amended charge. Separately, the respondent, the prosecution, filed an application for forfeiture of the car and cash ('properties') pursuant to s. 56(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUAA'). This application was allowed by the High Court, and an order of forfeiture in relation to the said properties was granted. This appeal concerned with the appellant's challenge against the High Court's decision. In this appeal, the following issues were raised: (i) whether the High Court erred in law and in fact in finding that the appellant had committed an 'unlawful activity' and a 'serious offence' under the AMLATFPUAA; and (ii) whether the High Court failed to consider or appreciate the evidence put forward by the appellant, including a claim made by a third party, in refuting the respondent's application under s. 56(1) of the AMLATFPUAA. In supporting the appeal, the appellant, among others, contended that: (i) there was no justifiable legal basis to sustain the forfeiture order granted by the High Court. According to the appellant, the respondent had not proven that he had committed any 'unlawful activity' as defined in the Second Schedule of the AMLATFPUAA, or that the seized properties were 'proceeds of an unlawful activity'. The appellant argued that since he was convicted of a lesser offence under s. 6 of the DDA – an offence not classified as a 'serious offence' under the Second Schedule – no 'serious offence' had been committed by the appellant; (ii) even if the forfeiture order had been premised on s. 39B of the DDA, a maximum evaluation of the respondent's evidence still failed to establish, on a balance of probabilities, that the appellant had engaged in any unlawful activity or serious offence. Therefore, the High Court's finding that the seized properties were proceeds of an unlawful activity was erroneous; (iii) in relation to the car, the appellant asserted that it was a used vehicle purchased using his income as a Grab driver. He also stated that his mother had provided him with monthly

allowances, which he utilised to fund the purchase; (iv) as for the cash, the appellant claimed that it was given to him by his uncle (the third party) as a birthday present and financial assistance to pursue his tertiary studies in Malaysia. The uncle had admitted giving the cash to the appellant. Based on *PP v. Sim Sai Hoon*, the appellant argued that the forfeiture application should not be allowed because there was equal probability that both the respondent's and appellant's evidence were true; and (v) the appellant also challenged the inclusion of his cautioned statement recorded under s. 37B(1)(b) of the DDA, which was exhibited in the respondent's affidavit. He contended that its inclusion was contrary to s. 37B(1), as the cautioned statement could only be admissible in a trial where the accused is charged with an offence under the DDA. According to the appellant, the inclusion of the statement was highly prejudicial and should be expunged from the respondent's affidavit.

Held (dismissing appeal)
Per Mohd Nazlan Ghazali JCA delivering the judgment of the court:

(1) Under s. 56(2) of the AMLATFPUAA, the High Court shall make an order of forfeiture if it is satisfied that the properties are either the subject matter or evidence relating to the commission of an offence under sub-s. 4(1) of the AMLATFPUAA, or the proceeds of an unlawful activity, or the instrumentalities of an offence. The question before the High Court, therefore, was whether the seized properties were the subject matter or evidence relating to the commission of an offence under sub-s. 4(1), or the proceeds of an unlawful activity, or the instrumentalities of an offence. Based on the evidence, the High Court found that the car was used by the appellant in the serious offence of drug trafficking, while the cash was inferred to have been derived from the appellant's drug trafficking activities. There was no reason to depart from the conclusion reached by the High Court. (paras 30 & 32-34)

(2) As per *Noor Ismahanum Mohd Ismail v. PP*, based on the plain language of s. 56(1), there is no requirement that a conviction under s. 4(1)(a) of the AMLATFPUAA or a terrorism financing offence must first be obtained before the respondent may apply for forfeiture. What is required is for the respondent to satisfy himself that the seized property falls under any one of paras. (a) to (d) of s. 56(1). The High Court, upon receiving such application, must undertake the requisite evaluation prescribed by s. 56(2) in considering whether to grant the order for forfeiture. The High Court must consider whether the seized property falls within any of the four categories or situations set out in paras. (a) to (d) of s. 56(1), which are repeated in s. 56(2)(a) in paras. (i) to (iv) respectively. In the instant case, it appeared that the High Court had relied on the ground under s. 56(2)(a)(iii) that the seized properties were the proceeds of an unlawful activity. (paras 44-46 & 48-49)

(3) Pursuant to s. 56(2)(a)(iii) of the AMLATFPUAA, the determination is straightforward – whether the said property was the proceeds of an unlawful activity. Therefore, the issue of conviction simply did not arise. The conviction of the appellant for an offence under s. 6 of the DDA, which is not a serious offence under the AMLATFPUAA, was entirely irrelevant to the question of whether the forfeiture order under s. 56 had been correctly granted. (paras 52-54)

(4) The forfeiture order was in fact grounded on the serious offence of drug trafficking under s. 39B of the DDA and not under s. 6 of the same Act. In any application for forfeiture under s. 56(1), the High Court need only be satisfied that, under s. 56(2), the seized property was the proceeds of unlawful activity, and not whether the appellant had been convicted under s. 39B of the DDA. There was no requirement for any prosecution, let alone conviction, for any serious or other offences under the forfeiture provisions in s. 56 of the AMLATFPUAA. It is imperative that there is sufficient evidence for the High Court to be satisfied that the offence of drug trafficking under s. 39B of the DDA had been committed by the appellant, not that he had been charged with or convicted of the same. In other words, the respondent could have even decided not to charge the appellant under s. 39B in the first place (or any other offence for that matter), since, provided that there was sufficient evidence to prove an unlawful activity and that the properties were derived therefrom, the forfeiture order could still have been validly granted by the High Court. (paras 55-57)

(5) The irrelevance of any prosecution was further underscored by the provision in s. 56A of the AMLATFPUAA. Therefore, even if the appellant had been acquitted of the charge of drug trafficking, it would not have made any difference to the validity of the forfeiture order granted by the High Court. (paras 58 & 59)

(6) An unlawful activity and a serious offence are not identical. There is a distinction between the two within the scheme of the AMLATFPUAA. An unlawful activity may be an activity which leads to the commission of a serious offence. Hence, even if the forfeiture order had relied on s. 6 of the DDA as the unlawful activity, given the definition of an unlawful activity, there was no difficulty in holding that the forfeiture order had been validly granted under either para. (i) or (iii) of s. 56(2)(a). This is because an unlawful activity in the present case could well be the offence of possession of dangerous drugs, which under the law is the prerequisite to any offence of trafficking in dangerous drugs under s. 39B of the DDA, which unmistakably is a serious offence under the AMLATFPUAA. It bears

A emphasis that the scheme of s. 56 is predicated more directly on the concept of unlawful activity rather than serious offence. Given this analysis, the appellant's argument that there was no unlawful activity because there was no serious offence under the AMLATFPUAA was flawed and without basis. (paras 62 & 64-65)

B **(7)** Referring to the case of *PP v. Kuala Dimensi Sdn Bhd & Ors* ('*Kuala Dimensi*'), a similar conclusion could not be reached in this appeal. Firstly, the facts of the instant appeal concerned properties in the form of a motor vehicle and a cash sum *vis-à-vis* the unlawful activity of drug trafficking, where crucially, the seizure of these movable properties C was plainly and closely proximate to the circumstances of the appellant's arrest in possession of dangerous drugs in the car owned and driven by him, as well as the discovery of the cash in the appellant's bedroom. Secondly, *Kuala Dimensi* concerned the previous law prior to the amendments which resulted in the present D AMLATFPUAA, when an order for forfeiture under s. 56 could only be made if the property had been obtained because of or in connection with an offence under s. 4(1) or a terrorism financing offence or was a terrorist property. In this appeal, the focus is on the new categories introduced in the present AMLATFPUAA, namely whether the E seized properties are the proceeds of an unlawful activity under s. 56(2)(a)(iii) or the instrumentalities of an offence under s. 56(2)(a)(iv). (paras 36 & 76-77)

(8) The standard of proof to be applied for forfeiture proceedings under s. 56 – in ascertaining whether the seized properties fell within any of F the four categories – is on the balance of probabilities. This is plain from the wording of s. 56(4). This must include consideration of whether an unlawful activity – such as a serious offence – had taken place. It would make little or no sense if it were otherwise, for example, if the forfeiture were to depend on whether the predicate G offence is proven beyond reasonable doubt when s. 56 unmistakably states that a forfeiture application is made and granted where there is no prosecution or conviction for a money laundering offence based on a serious offence or predicate offence. As such, the appellant's complaint that the evidence did not prove he was involved in any unlawful activity was without merit. (paras 78 & 79)

H **(9)** The appellant did produce a document of his annual partner statement from Grab, but this was only attached to his written submissions in opposing the forfeiture application at the High Court. This document was rightly disregarded, never mind its weight as supporting evidence I (which was very insubstantial). Meanwhile, the bank statement of his mother, which showed monthly savings transactions in 2019, could not be said to support the appellant at all, as the statements did not

identify the appellant as the transferee or recipient of any of the funds withdrawn or transferred from her account, nor that any of such funds were used to pay for the purchase of the appellant's car. The respondent was correct to submit that the appellant's explanation with respect to the purchase of the car was unproven. Therefore, the High Court was not wrong to grant the forfeiture order, and it also did not fail to take cognisance of or consider the appellant's defence. (paras 86 & 87)

(10) Even if the seized properties were not proceeds from an unlawful activity under s. 56(2)(a)(iii) of the AMLATFPUAA, the High Court had found that the car had been used by the appellant as an instrumentality of the offence of drug trafficking, which warranted the granting of the forfeiture order under s. 56(2)(a)(iv). The car had been driven by the appellant to collect the parcel containing the cannabis, that were recovered by the Customs at the time of the appellant's arrest. (paras 88 & 89)

(11) The appellant simply failed to show that the cash was a gift from his uncle. In the first place, at the time of his arrest, the appellant never told the Customs that the cash was not from his drug trafficking activities and that it was a gift from his uncle. Neither did he make any such claim when his statement was recorded three days after the arrest pursuant to s. 37B(1)(b) of the DDA. This claim of a gift only surfaced when another statement was taken from the appellant pursuant to s. 32 of the DDA, one year after his arrest. The claim was subsequently repeated in the appellant's affidavit opposing the forfeiture application. This reeks of an afterthought. Moreover, in any event, there was no evidence to support these bare averments by the appellant and his uncle. No documents were produced to show that the cash was given by the uncle. As such, there was no good reason to depart from the High Court's findings with respect to the cash, namely that the cash was proceeds of an unlawful activity under s. 56(2)(a)(iii). (paras 93-97)

(12) It was for the third party, *ie*, the uncle, to establish his entitlement to the seized properties *vis-à-vis* all the items in (a) to (e) of s. 61(4) of the AMLATFPUAA, on the balance of probabilities. However, the uncle had not produced any document to support his averment that he had gifted the cash to the appellant. The uncle merely averred his status and that he was a successful businessman. Nonetheless, even if it could be assumed that the uncle could indeed afford to bestow the cash to the appellant, and that the source of such funds could be assumed not to be illegitimate, there was still absolutely no evidence that the uncle

had in fact gifted the cash to the appellant. For this reason, there was no reason to interfere with the findings made by the High Court with respect to the third-party claim. (paras 102-104)

(13) Just like a s. 112 of the Criminal Procedure Code statement in *Liew Ket Boh & Anor v. PP* ('*Liew Ket Boh*') (and that under s. 32 of the AMLATFPUAA in *PP v. Awalluddin Sham Bokhari*), the statement recorded from the appellant under s. 37B of the DDA in the instant appeal would be evidence admissible under ss. 71 and 40 of the AMLATFPUAA. Similarly, the statement taken from the appellant under s. 32 of the AMLATFPUAA, would be admissible by virtue of the same ss. 71 and 40. These statements were obtained pursuant to an investigation (hence, necessarily involving examination into an unlawful activity) and later relied upon by the respondent in the forfeiture proceedings in accordance with s. 56(1), which, as stated by this court, was not a trial against any accused person but a *quasi*-criminal proceeding (as described in *Liew Ket Boh*) against the proceeds derived from an unlawful activity. (paras 118 & 119)

(14) In allowing the forfeiture order, the High Court, however, had not included the statements recorded from the appellant. Nonetheless, in considering the forfeiture application, the High Court correctly concluded that the pre-conditions of s. 56(2) had been fulfilled to justify the granting of the forfeiture order based on all other evidence. In the upshot, the appellant's complaint was devoid of merit; hence, no appellate interference with the High Court's decision was warranted. (paras 120-123)

Case(s) referred to:

Liew Ket Boh & Anor v. PP [2024] 3 CLJ 563 CA ***(refd)***
Noor Ismahanum Mohd Ismail v. PP [2018] 10 CLJ 597 CA ***(refd)***
PP v. Awalluddin Sham Bokhari [2018] 1 CLJ 305 FC ***(refd)***
PP v. Billion Nova Sdn Bhd & Ors [2016] 2 CLJ 763 CA ***(refd)***
PP v. Dato' Sri Mohd Najib Hj Abd Razak [2020] 8 CLJ 319 HC ***(refd)***
PP v. Kuala Dimensi Sdn Bhd & Ors [2021] 3 CLJ 198 FC ***(refd)***
PP v. Sim Sai Hoon [2020] 6 CLJ 760 HC ***(refd)***

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 3, 4(1)(a), 32, 40, 55, 56(1), (2)(a)(i), (ii), (iii), (iv), (4), 61(4)(a), (b), (c), (d), (e), 71, 76, Second Schedule
Criminal Procedure Code, s. 112
Dangerous Drugs Act 1952, ss. 2, 6, 37B(1)(b), 39A(2), 39B
Penal Code, ss. 409, 420

For the appellant - Kitson Foong, Chew Jee San & Vivian Yew Zhi Xuan; M/s Kit & Assocs
For the respondent - Afzainizam Abdul Aziz; DPP

[Editor's note: For the High Court judgment, please see PP v. Kavindra Suppiah [2023] CLJU 2295; [2023] 1 LNS 2295 (affirmed).]

Reported by Syamim Ariffin

JUDGMENT

Mohd Nazlan Ghazali JCA:

Introduction

[1] This is an appeal against the granting of a forfeiture order by the High Court under s. 56 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("the AMLATFPUAA 2001") against properties seized from the appellant.

[2] The appeal concerns the principal question whether the forfeiture order was correctly granted under s. 56 of the AMLATFPUAA 2001 and examines issues arising from the application of the law to the facts in this appeal.

[3] Having examined the appeal record and considered the submissions of parties, we unanimously decided that the appeal was without merit and therefore dismissed the same, for the reasons appearing hereinafter.

Key Background Facts

[4] Arising from a raid conducted by the Royal Malaysian Customs Department, a parcel containing four packages of dangerous drugs were found and recovered from a white Honda CRZ bearing registration number PKC 2244 registered to the appellant. The appellant was arrested, and his car and the drugs were seized by the Customs authorities. The appellant then led the authorities to his residence where a cash sum of RM90,000 was recovered from the wardrobe in the appellant's bedroom.

[5] The appellant was then charged with an offence of trafficking in dangerous drugs under s. 39B of the Dangerous Drugs Act 1952 ("the DDA 1952"). He was however subsequently convicted – upon his guilty plea – of a less serious offence of possession of cannabis under s. 6 of the DDA 1952 punishable under s. 39A(2) of the same Act, following an amended and reduced charge offered by the prosecution.

[6] Separately, the prosecution filed an application for a forfeiture of property – specifically the Honda CRZ and the cash of RM90,000 – against the appellant under s. 56(1) of the AMLATFPUAA 2001.

[7] The High Court decided in favour of the prosecution and granted an order of forfeiture in relation to the properties in question. Dissatisfied, the appellant filed this instant appeal.

A **Principal Grounds Of Appeal**

[8] The appellant raised a number of grounds of appeal against the decision of the High Court, which may be summarised, as done by the appellant in his petition of appeal as well as in his written and oral submissions, in two primary contentions, as follows.

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[9] The first is that the High Court erred in law and in fact in finding that the appellant had committed an 'unlawful activity' and a 'serious offence' under the AMLATFPUAA 2001, and the second is that the High Court failed to consider or appreciate the defence put forward by the appellant including that of the claim by the third party to refute the respondent/ prosecution's application under s. 56(1).

C

[10] The respondent contested these grounds of appeal and in its submissions maintained that the High Court was correct in its decision to forfeit the said properties.

D **[11]** We shall now analyse these key and related issues in turn.

Analysis And Findings Of This Court

Whether There Was Any 'Unlawful Activity' In Terms Of A Serious Offence Under The Second Schedule To The AMLATFPUAA 2001 Justifying The Forfeiture

E *Order*

[12] The appellant argued that no 'unlawful activity' as defined by the AMLATFPUAA 2001 had been committed by the appellant, and that the properties in question – the car and cash – were not 'proceeds of an unlawful activity'.

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[13] The basis to this argument was that a forfeiture order under s. 56(1) of the AMLATFPUAA 2001 can only be made in this case if the property in question is the proceeds of an unlawful activity; but that according to the appellant, no 'unlawful activity' as listed in the Second Schedule to the AMLATFPUAA 2001 had been proven by the respondent in its forfeiture

G application under s. 56(1) of the Act.

[14] This, the appellant argued, was because whilst the appellant was initially charged under s. 39B of the DDA 1952, which is an offence prescribed under the Second Schedule to the AMLATFPUAA 2001, he was

H in the end only convicted (upon his guilty plea) of a lesser offence under s. 6 of the DDA 1952 punishable under s. 39A(2) of the same Act. Crucially, the appellant highlighted that s. 6 of the DDA 1952 does not fall within the scope of 'serious offence' as specified under the Second Schedule of the AMLATFPUAA 2001.

I **[15]** As such, the appellant insisted that there was no justifiable legal basis to sustain the granting of the forfeiture order by the High Court.

Key Elements And Requirements Of s. 56 Forfeiture

[16] We think it is apposite that we start by making reference to the main statutory provisions governing forfeiture under the AMLATFPUAA 2001.

[17] The key provision is s. 56 which concerns forfeiture where there is no prosecution of a money laundering offence under sub-s. 4(1) of the AMLATFPUAA 2001 or a terrorism financing offence.

[18] This is to be contrasted with s. 55 of the same Act which applies to a forfeiture of property upon prosecution for an offence under the said sub-s. 4(1) or a terrorism financing offence.

[19] It must therefore be made clear that in the instant appeal, there is no prosecution of any money laundering offence under the said sub-s. 4(1) or any terrorism financing offence. The appellant was prosecuted, and indeed convicted, but that was for an offence under the DDA 1952, not under the AMLATFPUAA 2001.

[20] As such, here, s. 56 of the AMLATFPUAA 2001 applies, and the entirety of the same reads:

> Forfeiture of property where there is no prosecution
>
> 56. (1) Subject to section 61, where in respect of any property seized under this Act there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of the seizure, or where there is a freezing order, twelve months from the date of the freezing, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property is –
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> (a) the subject-matter or evidence relating to the commission of such offence;
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> (b) terrorist property;
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> (c) the proceeds of an unlawful activity; or
>
> (d) the instrumentalities of an offence.
>
> (2) The judge to whom an application is made under subsection (1) shall make an order for the forfeiture of the property if he is satisfied –
>
> (a) that the property is –
>
> (i) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;
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> (ii) terrorist property;
>
> (iii) the proceeds of an unlawful activity; or
>
> (iv) the instrumentalities of an offence; and
>
> (b) that there is no purchaser in good faith for valuable consideration in respect of the property.

A (3) Any property that has been seized and in respect of which no application is made under subsection (1) shall, at the expiration of twelve months from the date of its seizure, be released to the person from whom it was seized.

(4) In determining whether the property is –

B (a) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;

(b) terrorist property;

(c) the proceeds of an unlawful activity; or

C (d) the instrumentalities of an offence,

the court shall apply the standard of proof required in civil proceedings.

[21] As such, given the facts of this case, based on the above provision in s. 56(1), a forfeiture application could be made if the properties sought to be forfeited – the car and the cash, is either the subject-matter or evidence D relating to the commission of an offence under sub-s. 4(1) under category 2(a)(i) or the proceeds of an unlawful activity under category 2(a)(iii) or the instrumentalities of an offence under category 2(a)(iv). There is no dispute that the properties have nothing to do with any terrorism financing offence. Neither were they in the nature of a terrorist property.

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[22] At the same time, no issues were raised before us by the appellant in respect of the timing of the initiation of the forfeiture application by the respondent. In any event, the forfeiture application was made within 12 months from the date of the seizure of the properties, in adherence to s. 56(1).

F **[23]** The said forfeiture application, in accordance with s. 56(2), must therefore be considered by the High Court which shall make a forfeiture order on the relevant properties if it is satisfied that in this case not only are the properties either the subject-matter or evidence relating to the commission of an offence under sub-s. 4(1), the proceeds of an unlawful G activity or the instrumentalities of an offence, but also that there is no purchaser in good faith for valuable consideration in respect of the properties.

[24] It is necessary therefore for the respondent to show to the satisfaction of the High Court that the properties are either the subject-matter or evidence H relating to the commission of an offence under sub-s. 4(1), or the proceeds of an unlawful activity or the instrumentalities of an offence.

[25] The application by the respondent and the forfeiture order granted by the High Court appeared to rely much on the category of the seized properties being proceeds of an unlawful activity under s. 56(2)(a)(iii).

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[26] The expression unlawful activity is subject to two definitions in s. 3 of the AMLATFPUAA 2001.

[27] First, the term "unlawful activity" is defined as follows:

> "unlawful activity" means –
>
> (a) any activity which constitutes any serious offence or any foreign serious offence; or
>
> (b) any activity which is of such a nature, or occurs in such circumstances, that it results in or leads to the commission of any serious offence or any foreign serious offence,
>
> regardless whether such activity, wholly or partly, takes place within or outside Malaysia; …

[28] Secondly, the expression "proceeds of an unlawful activity" is defined thus:

> "proceeds of an unlawful activity" means any property, or any economic advantage or economic gain from such property, within or outside Malaysia –
>
> (a) which is wholly or partly –
>
> (i) derived or obtained, directly or indirectly, by any person from any unlawful activity;
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> (ii) derived or obtained from a disposal or other dealings with the property referred to in subparagraph (i); or
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> (iii) acquired using the property derived or obtained by any person through any disposal or other dealings referred to in subparagraph (i) or (ii); or
>
> (b) which, wholly or partly, due to any circumstances such as its nature, value, location or place of discovery, or to the time, manner or place of its acquisition, or the person from whom it was acquired, or its proximity to other property referred to in subparagraph (a)(i), (ii) or (iii), can be reasonably believed to be property falling within the scope of subparagraph (a)(i), (ii) or (iii); …

[29] It may thus be stated that an unlawful activity is an activity which constitutes any serious offence or one which leads to the commission of any such serious offence. "Serious offence" is defined as any of the various and many offences specified in the Second Schedule of the AMLATFPUAA 2001, which includes an attempt to commit any of those offences and the abetment of any of those offences. And further, "proceeds of an unlawful activity" refers essentially to the properties which are derived directly or indirectly from any unlawful activity.

[30] As mentioned above, under s. 56(2), the High Court shall, relevant to this case, make an order for forfeiture of the properties if it is satisfied that the properties are either the subject-matter or evidence relating to the commission of an offence under sub-s. 4(1), or the proceeds of an unlawful activity or the instrumentalities of an offence.

[31] The same s. 3 defines "instrumentalities of an offence" in the following terms:

> "instrumentalities of an offence" means –
>
> (a) anything which is used in, or in connection with, the commission of any unlawful activity; or
>
> (b) any property which is wholly or partly used in, or in connection with, the commission of any unlawful activity,
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> whether the thing or property is situated within or outside Malaysia; …

[32] The question then is whether the car – Honda CRZ and the cash of RM90,000 seized from the appellant are the subject-matter or evidence relating to the commission of an offence under sub-s. 4(1), the proceeds from an unlawful activity or the instrumentalities of an offence.

[33] From its evaluation of the affidavit evidence, especially those affirmed by the investigation officers for the money laundering and predicate offences respectively, as well as affidavits in opposition to the forfeiture filed on behalf of the appellant, the High Court found that the car – the Honda CRZ was used by the appellant in the serious offence of drug trafficking, as the parcel of four packages containing the cannabis were recovered from the said car driven by the appellant at the time of his arrest. Also based on affidavit evidence, the High Court concluded by inference that the RM90,000 was derived from the appellant's drug trafficking activities.

[34] We do not therefore find any reason to depart from the following conclusion arrived at by the High Court:

> [28] Setelah meneliti segala keterangan Affidavit-Affidavit khususnya daripada Pegawai Penyiasat Predikat dan AMLATFPUAA, di atas imbangan kebarangkalian, Mahkamah memutuskan Pemohon/Pendakwa Raya telah berjaya membuktikan kesemua harta yang dinyatakan dalam Notis Usul iaitu wang RM90,000.00 dan Kereta Honda CRZ adalah hasil harta yang diperolehi daripada aktiviti haram (kegiatan dadah) di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang mana merupakan satu kesalahan serius/berat di bawah Jadual Kedua Akta 613.

[35] In an important decision in the case of *PP v. Kuala Dimensi Sdn Bhd & Ors* [2021] 3 CLJ 198, the Federal Court, in a judgment delivered on its behalf by Her Ladyship Hasnah Mohammed Hashim FCJ (now Chief Judge of Malaya), had occasion to consider the application of the standard of proof in an application for forfeiture and although the following observation was

made as to whether the property sought to be forfeited concerned the offence of money laundering (now in s. 56(2)(a)(i)), in our view it would equally apply to the property being the proceeds of an unlawful activity (s. 56(2)(a)(iii)) as well as the instrumentalities of an offence (s. 56(2)(a)(iv)):

> [37] In an application for an order of forfeiture of property under s. 56(1) of the AMLATFA where there is no prosecution, the standard of proof applicable in order to determine whether the property has been obtained as a result of or in connection with an offence under s. 4(1) of the same Act, is the standard of proof required in civil proceedings and any question of fact to be decided by the court in proceedings under the Act shall be decided on the balance of probabilities. Section 70(1) of the Act reads:
>
> > 70(1) Any question of fact to be decided by a court in proceedings under this Act shall be decided on a balance of probabilities.
>
> [39] The provision of s. 56 of the AMLATFA does not absolve the prosecution from proving on a balance of probabilities that the properties seized under the purview of the Act were procured as a result of or in connection with an illegal activity or transaction. The PP must be able to prove that the properties seized were procured in connection with the commission of the predicate offence.

[36] We should clarify that *PP v. Kuala Dimensi Sdn Bhd & Ors* applied the law in the Anti-Money Laundering, Anti-Terrorism Financing Act 2001 ("the AMLATFA") prior to the amendments which came into effect pursuant to PU(A) 1467 on 8 August 2014 that resulted in the present AMLATFPUAA 2001. Since then, s. 56(4) of the AMLATFPUAA 2001, as referred to above, expressly states that in determining whether the property is evidence relating to the commission of an offence under sub-s. 4(1), the proceeds of an unlawful activity or the instrumentalities of an offence, the court shall apply the standard of proof required in civil proceedings.

[37] It is also useful to mention that under the AMLATFA, an order for forfeiture under s. 56 could only be made if the property is the subject-matter of or was used in the commission of an offence under s. 4(1) or a terrorism financing offence or is a terrorist property. The present AMLATFPUAA 2001 retains these categories in the new/present s. 56(2)(a)(i) and (ii) but have crucially introduced two additional categories for forfeiture, which are whether the seized property is the proceeds of an unlawful activity under s. 56(2)(a)(iii) or the instrumentalities of an offence under s. 56(2)(a)(iv).

[38] These two new categories appear to suggest a move away from the focus on the commission of an offence of money laundering, and reflects the change of emphasis from the attachment of guilt on any person under s. 4(1) to the status of the properties sought to be forfeited instead (on this point, see also below, on the decision of the Court of Appeal in *Noor Ismahanum Mohd Ismail v. PP* [2018] 10 CLJ 597).

[39] Now, although the High Court ruled, as above, in concluding that both the Honda CRZ and the RM90,000 in cash seized from the appellant were proceeds of an unlawful activity of the serious offence of drug trafficking (as per s. 56(2)(a)(iii)), in our view it could also be concluded that in respect of the Honda CRZ, the same was an instrumentality of the said offence, in satisfaction of s. 56(2)(a)(iv).

[40] We observe that even though the High Court did not so expressly conclude in respect of the Honda CRZ (that it was an instrumentality of an offence), the court did undoubtedly state in its analysis of the evidence that the vehicle "telah digunakan sebagai peralatan kesalahan dalam melakukan kesalahan serius/berat iaitu pengedaran dadah".

[41] We are mindful that the true grievance of the appellant is that the s. 6 of the DDA 1952 offence for which the appellant was convicted is not an unlawful activity or a serious offence under the AMLATFPUAA 2001, such that the decision of the High Court granting the forfeiture order under s. 56 was one made in error.

[42] We have to disagree.

[43] This is because the appellant's argument in this regard demonstrates a misconception of the requirements of the applicable law. And we state as such for a number of reasons.

No Requirement For Any Conviction Or Prosecution

[44] First, s. 56 of the AMLATFPUAA 2001 contains no requirement that the unlawful activity that forms the basis of the forfeiture application must be a serious offence for which there must be a conviction. As held by this court in *Noor Ismahanum Mohd Ismail v. PP* [2018] 10 CLJ 597, based on the plain language of s. 56(1), there is no requirement that a conviction under s. 4(1)(a) of the AMLATFPUAA 2001 or a terrorism financing offence must first be obtained before the Public Prosecutor could apply for forfeiture.

[45] Indeed, s. 56 of the AMLATFPUAA 2001 can only be invoked if there is no prosecution for a money laundering offence under s. 4(1) in the first place, relevant to the seized property intended to be forfeited.

[46] What is required – we repeat – is for the Public Prosecutor to satisfy himself that the seized property falls under any one of paras. (a) or (b) or (c) or (d) of s. 56(1) in respect of the application for forfeiture, and for the High Court, upon receiving such application from the Public Prosecutor to undertake the requisite evaluation as prescribed by s. 56(2) in its consideration whether or not to grant the order for forfeiture.

[47] The Court of Appeal in *Noor Ismahanum Mohd Ismail v. PP* (*supra*) further said this:

[15] The judge's primary concern in an application under s. 56(1) is with the legal status of the property, not the guilt or otherwise of any person under s. 4(1)(a) of the AMLATFA. He must order for forfeiture if the property falls under para. (i) or (ii) or (iii) or (iv) of sub-s. (2)(a).

[48] We pause here to highlight that the High Court under s. 56(2) must now consider if the seized properties could fall within the scope of any one of the four categories or situations set out in paras. (a) to (d) of s. 56(1) as repeated in s. 56(2)(a) in paras. (i) to (iv) respectively. In leading appellate decisions on s. 56 such as in the Court of Appeal's decision in *PP v. Billion Nova Sdn Bhd & Ors* [2016] 2 CLJ 763 and the Federal Court case of *PP v. Kuala Dimensi Sdn Bhd & Ors* (*supra*), the question, in this regard, was only whether under the then s. 56(2)(a), the High Court was satisfied that the property was the subject-matter of or was used in the commission of an offence under sub-s. 4(1).

[49] In contrast, at the risk of repetition, in the present appeal before us, we note from the notice of application for forfeiture and the grounds of judgment of the High Court that reliance appears to have been made on the ground in s. 56(2)(a)(iii) that the seized properties were the proceeds of an unlawful activity instead of that they were the subject-matter or evidence relating to the commission of a money laundering offence under sub-s. 4(1) or a terrorism financing offence. These two – evidence relating to commission of a money laundering offence and proceeds of an unlawful activity – are obviously not similarly worded but for all intents and purposes they could give rise to the same legal consequence of forfeiture.

[50] Also, even though both involve the requisite application of the concept of unlawful activity, it is less straightforward if it must be established that the property is the subject-matter or evidence relating to the commission of a money laundering offence under s. 4(1), than merely having to show that the property is proceeds of an unlawful activity. Section 4(1)(a) for example, states that any person who engages, directly or indirectly, in a transaction that involves proceeds of an unlawful activity or instrumentalities of an offence commits a money laundering offence.

The Respondent Need Only Show Properties Are Proceeds From An Unlawful Activity Or Instrumentalities Of An Offence

[51] For the purposes of determining, under s. 56(2)(a)(i), whether the seized property was the subject-matter or evidence relating to the commission of a money laundering offence under sub-s. 4(1), it would be necessary to demonstrate evidence of a person engaging in a transaction involving proceeds of an unlawful activity.

[52] In accordance with s. 56(2)(a)(iii), however, the determination is more direct – simply whether the said property was the proceeds of an unlawful activity.

[53] Reverting to the present appeal, whilst authorities are clear, as shown above, in stating the non-necessity for there to be a conviction of a serious offence (or generally, of the predicate offence) such judicial pronouncements have been made in the context of the evaluation by the High Court under s. 56(2)(a)(i) as to whether the seized property was the subject-matter or evidence relating to the commission of a money laundering offence under sub-s. 4(1). As for s. 56(2)(a)(iii) on whether the said property was simply the proceeds of an unlawful activity, in our view, the issue of conviction does not even arise.

[54] The net effect of all of this is that the conviction of the appellant for an offence under s. 6 of the DDA 1952 which is not a serious offence under the AMLATFPUAA 2001 is entirely irrelevant to the question whether the forfeiture order under s. 56 had been correctly granted.

The Forfeiture Order Was On The Basis The Properties Were Proceeds Of The Serious Offence Of Drug Trafficking

[55] The second reason for our conclusion that the forfeiture order was not wrongly granted is that even though the conviction was recorded in respect of the offence under s. 6 of the DDA 1952 (which undeniably is not a serious offence under the AMLATFPUAA 2001), the application for forfeiture by the respondent and the order subsequently made by the High Court, as clearly expressed in the grounds of judgment, were in fact grounded on the serious offence of drug trafficking under s. 39B of the DDA 1952, not under s. 6 of the DDA 1952.

[56] And we must state that there is absolutely nothing wrong with this, for it is essential to appreciate that in any application for forfeiture of seized property under s. 56(1) of the AMLATFPUAA 2001, the High Court must be satisfied that under s. 56(2), the said property is the proceeds of unlawful activity and not whether, say, the appellant had been convicted under s. 39B of the DDA 1952. There is no requirement for any prosecution, let alone conviction for any serious or other offences under the forfeiture provisions in s. 56 of the AMLATFPUAA 2001. It is imperative that there is sufficient evidence for the High Court to be satisfied that based on affidavit evidence, the offence of drug trafficking under s. 39B of the DDA 1952 had been committed by the appellant, but not that he must have been charged, let alone convicted for the same.

[57] In other words, the respondent could even have decided not to charge the appellant under s. 39B for trafficking in cannabis in the first place (or for any other offence for that matter), since provided there is sufficient affidavit evidence to prove an unlawful activity, and the properties being derived therefrom, the forfeiture order could still have been validly granted by the High Court. After all, s. 56 operates on the premise that there is no prosecution (and therefore there cannot be any conviction) of a money

laundering offence but that to warrant a forfeiture order, the High Court must examine under s. 56(2) whether, among others, the seized property is evidence of the commission of such an offence or that it is proceeds of an unlawful activity, as discussed above.

[58] In addition, we should also state that the irrelevance of any prosecution to the making of a forfeiture order under s. 56 of the AMLATFPUAA 2001 is further underscored by the provision of s. 56A of the same Act which states the following clear terms:

> Forfeiture order not to be affected by acquittal
>
> 56A. The fact that a person has been acquitted of a serious offence or a foreign serious offence shall not affect the power of the court to issue a forfeiture order.

[59] Thus, even if the appellant were to have been acquitted of the charge of drug trafficking, it would not have made any difference to the validity of the forfeiture order granted in this case.

[60] However, whilst unnecessary, should there be a conviction or an acquittal – of any offence, this fact is relevant and admissible in terms stated in s. 76 of the AMLATFPUAA 2001, the relevant parts of which state as follows:

> Proof of conviction and acquittal
>
> 76. (1) For the purposes of any proceedings under this Act, the fact that a person has been convicted or acquitted of an offence by or before any court in Malaysia or by a foreign court shall be admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed or did not commit that offence, whether or not he is a party to the proceedings, and where he was convicted whether he was so convicted upon plea of guilt or otherwise.
>
> …

Unlawful Activity Does Not Necessarily Equate To Serious Offence

[61] The third reason why we say we reject the appellant's argument that the forfeiture order was wrongly granted because s. 6 of the DDA 1952 offence is not an unlawful activity or a serious offence is this.

[62] Fundamentally, an unlawful activity and a serious offence are not the identical. There is a distinction with a difference between the two in the scheme of the AMLATFPUAA 2001. As stated earlier, a "serious offence" is defined in s. 3 to mean any of the offences specified in the Second Schedule of the Act, which includes an attempt to commit any of those offences, as well as the abetment of any of those offences. These are specific and clearly set out. But an unlawful activity is not exactly another term for a serious offence.

[63] As mentioned by the respondent in its written submissions, this was emphasised by the High Court in *PP v. Dato' Sri Mohd Najib Hj Abd Razak* [2020] 8 CLJ 319 in the following terms:

> [1022] The other reason why I consider that the charges in this case can be sustained lies in the definition of "unlawful activity", which I repeat reads as follows:
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> "unlawful activity" means:
>
> (a) any activity which constitutes any serious offence or any foreign serious offence; or
>
> (b) **any activity which is of such a nature, or occurs in such circumstances, that it results in or leads to the commission of any serious offence or any foreign serious offence,**
>
> regardless whether such activity, wholly or partly, takes place within or outside Malaysia;
>
> [1023] The definition of unlawful activity is therefore not confined only to the activity which constitutes a predicate offence (the serious offence as defined in the Act) such as the abuse of position offence or the CBT offence but also any activity which is of such nature, or occurs in such circumstances that it results in or leads to the commission of any serious offence.
>
> [1024] What this therefore means is that an unlawful activity need not necessarily be only the predicate offence itself, but can separately be an activity which results in the predicate offence. It follows that even though in all cases of prosecution under s. 4(1) of the AMLATFPUAA, the unlawful activity must be proven, it does not mean that in all cases, the predicate offence itself must be proved to have been committed. Depending on the charges and the evidence adduced at trial, it suffices also that an activity that leads to the commission of the offence be established. (emphasis added)

[64] An unlawful activity could therefore be an activity which leads to the commission of a serious offence. In our view, what this means is that even if the forfeiture order had relied on s. 6 of the DDA 1952 as the unlawful activity – which essentially is the offence of possession of the dangerous drugs of cannabis, given the definition of an unlawful activity, we find no difficulty in holding that such an order had been validly granted under either of para. (i) or (iii) of s. 56(2)(a). This is because an unlawful activity, in this present case, could well be the offence of possession of dangerous drugs, which under the law is the prerequisite to any offence of trafficking in dangerous drugs under s. 39B of the DDA 1952 for which the appellant was arrested and initially charged. In this sense, possession could be an activity which is of such a nature, or occurs in such circumstances, that it results in or leads to the commission of trafficking in dangerous drugs, which

unmistakably is a serious offence under the AMLATFPUAA 2001. It bears emphasis that the scheme of s. 56 is predicated more directly on the concept of unlawful activity, than that of a serious offence.

[65] As such, given the above analysis, the appellant's argument that there was no unlawful activity in this forfeiture since there was no serious offence under the AMLATFPUAA 2001 is therefore flawed and without basis.

Whether There Was Sufficient Evidence Of The Unlawful Activity Or Serious Offence Of Drug Trafficking

[66] The appellant's one other key complaint is that even if the forfeiture was based on the offence of trafficking in dangerous drugs under s. 39B of the DDA 1952, a maximum evaluation of the affidavit evidence and exhibits adduced by the respondent did not prove on the balance of probabilities that the appellant was involved in any unlawful activity or serious offence. The High Court therefore had erroneously ruled that the properties in question were proceeds from an unlawful activity based merely on the unsubstantiated averments contained in the affidavit evidence produced by the respondent.

[67] The appellant referred to *PP v. Kuala Dimensi Sdn Bhd & Ors* (*supra*) and argued that the Federal Court had dismissed the prosecution's application under s. 56(1) and ruled that cogent documentary evidence was required to support the averments made in the affidavits.

[68] We observe that the Federal Court in that case made this important finding:

> [48] As we have alluded the affidavits merely described the money trail, in particular the movement of money from Kuala Dimensi's to various other account/s but did not offer any evidentiary proof that the Properties sought to be forfeited were from the subject-matter of or was used in the commission of the offence of money laundering or that they are connected to the two predicate offences. The affidavits of the appellant lack substantial evidence to support the allegation of the commission of the predicate offences neither were there any evidence that the respondents had abetted the accused or had participated in the commission of the offence. The affidavits lack explanations, explaining explicitly how the Properties were funded and the linkage to the illegal transaction.
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> [49] When applying the civil standard of proof on a balance of probabilities, merely stating facts with scanty documentary evidence is insufficient. There must be more cogent documentary evidence to support the averments made and that all facts necessary to prove their case must be presented and are probably true. The affidavits in support left much to be desired as there are serious gaps and are devoid of any linkages to the commission of the offence when considered in light of the mandatory requirements as provided under s. 56(1) of the AMLATFA. On the

A contrary, the respondents through their affidavits in reply explained in detail and adduced sufficient documents to justify the manner the Properties were procured.

[69] It is clear from the above that it was found in that case that the affidavits of the prosecution lacked substantiation to support the averments B which also contained hearsay evidence and material errors of fact.

[70] We stress that there can be no doubt that the quality and sufficiency of evidence matters most. It bears emphasis that this court in *Noor Ismahanum Mohd Ismail v. PP* (*supra*) observed thus:

C [17] In determining whether the property is "the proceeds of an unlawful activity", the standard of proof to be applied by the judge is the civil standard of proof, *ie*, proof on the balance of probabilities, as stipulated by ss. 56(4) and 70(1). This standard of proof must not be mistaken for proof beyond reasonable doubt, which is the heavier standard of proof that the Public Prosecutor is required to discharge in order to bring home D a criminal charge against any person, such as a charge under s. 4(1)(a) of the AMLATFA.

[71] In the instant case before us, as stated by the appellant in his written submissions, the respondent had relied on and produced three affidavits in support of the s. 56 forfeiture application. These are firstly, by DPP Rohaiza E binti Zainal; secondly by the investigating officer for the predicate offence, Penolong Pengarah Kastam Muhamad Ardy Ismail; and thirdly, by the investigating officer for money laundering, Penolong Penguasa Kastam Rosmawia Azahri. According to the appellant, a detailed perusal of these affidavits, at best, only proved that the appellant had been arrested on F 5 February 2021 after having collected the parcel which was later discovered to contain the dangerous drugs of cannabis; and that he was eventually charged with an offence of trafficking in dangerous drugs under s. 39B of the DDA 1952.

[72] At this juncture we find it useful to again refer to the decision of this G court in *Noor Ismahanum Mohd Ismail v. PP* (*supra*), not least because in that case, other than affirming the non-necessity for a conviction, the court had to deal with whether, like presently, the property in question was proceeds of an unlawful activity, *vis-à-vis* the application of the standard of proof. The court had this to say:

H [16] *In the context of the present case, what the learned JC had to determine was whether the property was "the proceeds of an unlawful activity" within the meaning of para. (a) (iii) of s. 56(2) and not whether any person had been convicted or acquitted of an offence under s. 4(1)(a) of the AMLATFA* although the fact of such conviction or acquittal was relevant under s. 76.

I [17] *In determining whether the property is "the proceeds of an unlawful activity", the standard of proof to be applied by the judge is the civil standard of proof, ie, proof on the balance of probabilities, as stipulated by ss. 56(4) and 70(1).* This

standard of proof must not be mistaken for proof beyond reasonable doubt, which is the heavier standard of proof that the Public Prosecutor is required to discharge in order to bring home a criminal charge against any person, such as a charge under s. 4(1)(a) of the AMLATFA.

[18] As to the question when does a person discharge his civil standard of proof, Lord Denning in *Miller v. Minister of Pensions* [1947] 2 All ER 372 explained:

> If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged but if the probabilities are equal, it is not.

[19] *Thus, if the judge in an application under s. 56(1) finds it to be more probable than not that the property is derived from a transaction that involves "the proceeds of an unlawful activity", that will be sufficient for him to make an order of forfeiture under s. 56(2).* There is no need for him to be satisfied "beyond any reasonable doubt" that the property is derived from an "unlawful activity".

[20] To recapitulate, "unlawful activity" means "any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence" and "proceeds of an unlawful activity" means "any property derived or obtained, directly or indirectly, by any person as a result of any unlawful activity." Illegal deposit taking is a "serious offence" by definition and is therefore an "unlawful activity" for the purposes of s. 56(2)(a)(iii) of the AMLATEPUA.

[21] *These twists and turns in legislative acrobatics strains the tongue but what it means is that if any property is derived from any unlawful activity (of which illegal deposit taking is one such activity), it must be forfeited, irrespective of whether any person has been convicted or otherwise of the offence of money laundering under s. 4(1)(a) of the AMLATFA.* (emphasis added)

[73] The High Court had made clear findings and in our assessment, it cannot be doubted that based on these affidavits, such findings are well-founded. The appellant was arrested in pursuance of s. 39B of the DDA 1952 because he was involved in trafficking in dangerous drugs. He was driving his Honda CRZ (PKC 2244) when he was stopped and the dangerous drugs – cannabis weighing about 420g contained in four packages was discovered in the said car, and thus seized by the Customs authorities. The cash of RM90,000 was subsequently found in the wardrobe in his bedroom when the raiding team was led by the appellant to his residence.

[74] We hasten to add that in the final analysis, it is about the application of the law to the facts of each case – as to whether in the context of forfeiture application under s. 56 of the AMLATFPUAA 2001, a case for forfeiture has been made out on a balance of probabilities. Here, we must again refer to the case of *PP v. Kuala Dimensi Sdn Bhd & Ors* (*supra*) where the Federal Court stated thus:

A [42] Even on the balance of probabilities it is nevertheless incumbent upon the prosecution in an application for forfeiture under s. 56 AMLATFA to prove the following:

(i) The existence of a predicate offence, the evidence and basis upon which the commission of the offence has been established;

B (ii) Identify the proceeds or "the subject-matter of" the predicate offences; and

(iii) The manner the respondents have abetted or participated in the commission of the predicate offence.

C **[75]** In that case, the principal contention of the prosecution was that the seized properties and monies were procured in connection with the commission of a series of predicate offences under ss. 409 and 420 of the Penal Code involving four accused persons. The Federal Court concluded that the prosecution had failed to establish, on a balance of probabilities, that the seized properties had been obtained as a result of or in connection with
D a s. 4(1) money laundering offence since based on affidavit evidence, the prosecution had failed to identify the nature and extent of the participation of the respondents with the offence of money laundering or linking the procurement of the relevant properties to the predicate offences.

E **[76]** We do not think a similar conclusion could be reached in the instant appeal before us for two main reasons. First, the facts of the instant appeal before us concerned properties in the nature of a motor vehicle and a cash sum *vis-à-vis* the unlawful activity of drug trafficking, where, crucially, the seizure of these movable properties was so plainly and closely proximate to the circumstances of the arrest of the appellant in possession of the dangerous
F drugs in the car owned and driven by the appellant, and the discovery of the cash of RM90,000 in the wardrobe in his own bedroom.

[77] Secondly, as discussed above, *PP v. Kuala Dimensi Sdn Bhd & Ors* (*supra*) was concerned with the previous law in the AMLATFA, when an order for
G forfeiture under s. 56 could only be made if the property had been obtained as a result of or in connection with an offence under s. 4(1) or a terrorism financing offence, as the case may be, or is terrorist property. In the instant appeal, focus is on the new categories introduced in the present AMLATFPUAA 2001 which are whether the seized properties were the proceeds of an unlawful activity under s. 56(2)(a)(iii) or the instrumentalities
H of an offence under s. 56(2)(a)(iv).

[78] For completeness, we conclude this part by making the point that the standard of proof to be applied throughout the forfeiture proceedings under s. 56 – in ascertaining whether a seized property falls within any of the
I aforementioned four categories is on the balance of probabilities. This, as mentioned earlier, is plain from the words of s. 56(4) which expressly states

that the court shall apply the standard of proof required in civil proceedings – on the balance of probabilities. This must include consideration on whether an unlawful activity – such as a serious offence – had taken place. It makes little or no sense if it were otherwise, such as if the forfeiture is based on whether the predicate offence is proven beyond reasonable doubt when s. 56 unmistakably states that a forfeiture application is made and granted where there is no prosecution or conviction for a money laundering offence based on a serious offence or predicate offence.

[79] As such, the appellant's complaint that the evidence did not prove he was involved in any unlawful activity is unmeritorious.

Whether The Appellant As Well As Any *Bona Fide* Third Party Had Successfully Rebutted, On A Balance Of Probabilities The Said s. 56(1) Application

[80] And further, neither did the appellant manage to discharge his evidential burden on a balance of probabilities to establish that the seized properties were not proceeds of an unlawful activity. Again, we refer to the decision of this court in *Noor Ismahanum Mohd Ismail v. PP* (*supra*) where it was instructively held as follows:

> [34] We were unable to accede to the argument. In our view, once the Public Prosecutor produced *prima facie* proof that the monies in the two bank accounts were the proceeds of illegal deposit taking, the burden shifted to the claimant to show to the contrary by virtue of s. 103 of the Evidence Act 1950 ("the Evidence Act") which provides:
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> > 103. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
>
> …
>
> [36] Applying the principle to the facts of the present case, the Public Prosecutor discharged his burden by establishing *prima facie* that the monies in the two bank accounts were "the proceeds of an unlawful activity", *ie*, illegal deposit taking as the appellant had no valid licence to accept the deposits.
>
> [37] Once that was established by the Public Prosecutor, the burden shifted to the appellant to either show that she had a valid licence to accept the deposits or alternatively that all or any part of the monies in the bank accounts were not the proceeds of illegal deposit taking. To hold otherwise would be to place an unreasonable burden on the Public Prosecutor. Enforcement of the AMLATEPUA would come to a standstill as money launderers would mix legal money with illegal money to beat the daylights out of the law.

A

> [38] Whether or not the appellant succeeded in discharging her burden of proof was entirely for the learned JC to determine, having regard to the evidence before him. In the present case, the learned JC's firm finding was that the appellant failed to do so. It was therefore futile for the appellant to argue that not all but only some of the monies in the two bank accounts were the proceeds of illegal deposit taking.

B

[81] No less pertinently, we must point out that like in the present appeal before us, the forfeiture in *Noor Ismahanum Mohd Ismail v. PP* (*supra*) was also predicated on s. 56(2)(a)(iii) – proceeds of an unlawful activity – upon the affirmative finding of which, the High Court granted the order for forfeiture. The court had this to say in that case:

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> [39] The appellant cited the decision of this court in *PP v. Billion Nova Sdn Bhd & Ors* [2016] 2 CLJ 763; [2016] 4 MLRA 226 where it was held that in an application under s. 56 of the AMLATFPUA, a forfeiture order can only be made if an offence under s. 4(1)(a) of the AMLATFA has been proved to have been committed.

D

> [40] We failed to see how this case could be of assistance to the appellant as the monies deposited in the two bank accounts had been found by the learned JC to be the proceeds of illegal deposit taking, *ie*, "the proceeds of an unlawful activity" within the meaning of s. 56(2)(a)(iii) of the AMLATEPUA. In other words, it had been proved that the monies in the two bank accounts were 'more probable than not' the proceeds of an unlawful activity. Having made this finding of fact, the learned JC had no option but "shall" make an order of forfeiture, which he did.

E

[82] The Court of Appeal in that case therefore affirmed that there was no necessity for proof of the commission of a money laundering offence under s. 4(1) if it could already be established that the property in question was proceeds from an unlawful activity under s. 56(2)(a)(iii). It will also be recalled, as explained earlier, that *PP v. Billion Nova Sdn Bhd & Ors* (*supra*) referred to in the above passage in *Noor Ismahanum Mohd Ismail v. PP* dealt with the law before the introduction of the present s. 56(2)(a)(iii) – on whether the property is proceeds of an unlawful activity.

F

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Whether The Car Was Proceeds From An Unlawful Activity Or An Instrumentality Of An Offence

[83] It must be emphasised that in light of the evidence averred and disclosed in the aforementioned affidavits, and including statements recorded from the appellant pursuant to s. 37B(1)(b) of the DDA 1952 as well as s. 32 of the AMLATFPUAA 2001, and other documents such as police reports, the respondent was able to make out the version that the appellant graduated from Help University in March 2020 but as he had been unemployed for almost one year (before his arrest), he became involved in peddling in dangerous drugs which started for own consumption before he

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got into supplying the same to his friends. The appellant soon built on this further and experimented with acquiring drugs on the internet for onward sale to clients. He was dealing with cannabis online using a false name.

[84] He was arrested at a Petron petrol station at Jalan Tun Sambanthan Kuala Lumpur when he drove to the station in his own car – Honda CRZ with registration number PKC2244 to collect the delivery of a parcel containing the cannabis. He was arrested once he got back into his car, with the parcel – comprising four packages of cannabis – found on the front passenger seat of his car. The cash of RM90,000 was recovered from the wardrobe in his bedroom as the Customs team were subsequently led by the appellant to his place of residence.

[85] As highlighted by the appellant, his explanation in relation to the vehicle Honda CRZ Hybrid was that it was a used car purchased by him in February 2020 with the purchase price of RM40,000. He paid the purchase price by way of instalment payments to the previous owner using his income as a Grab driver. For this he showed the annual partner statement from Grab. Aside from the appellant's income as a Grab driver, the appellant also claimed to have utilised the monthly allowances received from his mother to fund the purchase price of the vehicle.

[86] Now, the appellant did produce a document on his annual partner statement from Grab (which purported to show that his net earnings for the year 2018 was RM18,874.46) but this was only attached to his written submissions in opposing the forfeiture application at the High Court, and hence was rightly disregarded, never mind its weight as a supporting evidence (which we consider to be very insubstantial). Whilst the bank statement of his mother which showed monthly savings transaction statement in 2019 could not be said to support the appellant at all as the statements did not identify the appellant as the transferee or recipient of any of the funds withdrawn or transferred from her account or that any of such funds were used to pay off the purchase of the appellant's Honda CRZ.

[87] The respondent was therefore correct in submitting that the explanation of the appellant that he had bought the car from his earnings as a part time Grab driver to be unproven. As was the High Court not wrong in granting the forfeiture order. The High Court did not fail to take cognisance or consider the appellant's defence.

[88] And we must again stress that in any event, the High Court had found that (if not a proceeds of an unlawful activity under s. 56(2)(a)(iii) of the AMLATFPUAA 2001), the appellant's Honda CRZ had been used as an instrumentality of the offence of drug trafficking which warranted the granting of the forfeiture order under s. 56(2)(a)(iii). The High Court stated as follows, on this point:

A [21] Namun, daripada keterangan Affidavit-Affidavit khususnya daripada Pegawai-Pegawai Penyiasat AMLA dan Predikat, Mahkamah berpuas hati bahawa kenderaan tersebut iaitu Honda CRZ Hybrid telah digunakan sebagai peralatan kesalahan dalam melakukan kesalahan serius/berat iaitu pengedaran dadah. Ini adalah kerana parcel (bungkusan) yang mengandungi dadah tersebut telah dijumpai di dalam kenderaan tersebut
B semasa tangkapan. Responden tidak membuat hujahan tentangan yang serius mengenai harta ini.

[89] We add for emphasis that the CRZ Hybrid, owned by the appellant, was driven by him to the Petron petrol station to collect the parcel containing the cannabis, which dangerous drugs was then placed by the appellant on the
C front passenger seat of the CRZ Hybrid before his arrest.

[90] We need in this regard to refer only to the wide definition of "trafficking" found in s. 2 of the DDA 1952 as follows:

"trafficking" includes the doing of any of the following acts, that is to say,
D manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug otherwise than under the authority of this Act or the regulations made under the Act; …

E Whether The Cash Of RM90,000 Was Proceeds From An Unlawful Activity

[91] In relation to the cash of RM90,000 the appellant had explained that it was a gift from his uncle, Datuk Seri Pulainthiran a/l Vendasamy, as a birthday present as well as financial aid for the appellant to pursue his tertiary studies in Malaysia. Datuk Seri Pulainthiran a/l Vendasamy, who
F admitted to being the owner of two jewellery businesses in his affidavit in support averred that in January 2020, he had given the appellant RM30,000 in cash as birthday gift; and that subsequently in or around April, July and October 2020, he had gifted the appellant a total of RM60,000 in cash over three separate occasions for the appellant to further his tertiary studies
G locally.

[92] The appellant then argued that based on the High Court case of *PP v. Sim Sai Hoon* [2020] 6 CLJ 760 which held that a forfeiture application shall fail if the prosecution's evidence leads to an equal probability of both the applicant's and the respondent's case being true, the appellant here had
H successfully rebutted the respondent's averments, on balance of probabilities, that the property in question were "proceeds of an unlawful activity" under s. 56(2)(a)(iii) of the AMLATFPUAA 2001.

[93] We find great difficulty to agree with this. This is because the appellant has simply failed to show that the RM90,000 found in his bedroom
I was a gift from his uncle. In the first place the appellant had never told the Customs team that this substantial cash money was not from drug trafficking

activities and had nothing to do with illegal drugs or even that it was a gift from his uncle when he was arrested on 5 February 2021. Neither did he say anything to this effect when he had his statement recorded three days later on 8 February 2021 pursuant to s. 37B(1)(b) of the DDA 1952.

[94] In fact, the claim that the RM90,000 was a gift from his uncle only first surfaced when another statement was taken from the appellant on 14 July 2022 pursuant to s. 32 of the AMLATFPUAA 2001 – more than one year from his arrest. This was further repeated in his affidavit affirmed on 11 November 2022 to oppose the forfeiture application filed on 3 August 2022 that the cash monies were given in stages by his uncle in January, April, July and October 2020 as a motivation and support for the appellant to pursue his studies in Malaysia because his parents could not afford sending him for further studies to Australia. This, in our view, reeks of an afterthought.

[95] Moreover, in any event, there is no evidence to support these bare averments by the appellant and his uncle. No documents have been shown to support that the cash came from the appellant's uncle, or to demonstrate that such sum or any part of it was handed over by the uncle to his nephew. There were no bank statements, no evidence of communication between the two or involving the appellant's parents on the subject-matter. There was nothing.

[96] We accordingly find no good reason to depart from the findings of the High Court in respect of the seized cash of RM90,000, as follows:

> [23] Mahkamah telah menimbang keterangan melalui Eksibit Responden dan Mahkamah telah memutuskan bahawa tiada keterangan dokumentari yang dikemukakan oleh Responden mengenai wang RM90,000.00 itu adalah dari pemberian bapa saudaranya. Contohnya adalah Akaun Banknya yang gagal dikemukakan.
>
> [24] Dengan kegagalan ini, inferensnya ialah wang RM90,000.00 itu adalah hasil dari aktiviti haram iaitu aktiviti pengedaran dadah.
>
> [25] Selain daripada itu, keterangan menunjukkan Responden merupakan seorang penganggur semasa ditangkap/tarikh kejadian dan pernah bekerja sebagai pemandu Grab. Dengan latar belakang bahawa Responden telah ditangkap dengan sejumlah besar dadah berbahaya, maka inferens yang boleh dibuat sekali lagi adalah Responden memang terlibat dengan aktiviti pengedaran dan penjualan dadah dan wang RM90,000.00 tersebut adalah hasil daripada aktiviti pengedaran dan penjualan dadah tersebut.
>
> [26] Ini adalah kerana dari segi hukum akal, mana mungkin seorang penganggur dan pemandu Grab mempunyai simpanan wang yang amat banyak berjumlah RM90,000.00 jika itu bukan wang hasil aktiviti haram iaitu penjualan dan pengedaran dadah.

A [27] Setelah meneliti segala keterangan Affidavit dan dokumen berkaitan, Mahkamah berpuas hati bahawa satu kesalahan berat/serius telah dilakukan oleh Responden iaitu di mana Responden telah melakukan kesalahan berkaitan dengan aktiviti pengedaran dadah yang menyebabkan Responden dituduh di bawah Seksyen 39B Akta Dadah Berbahaya walaupun akhirnya beliau dituduh semula di bawah milikan sahaja di
B bawah Seksyen 6/29A Akta Dadah Berbahaya.

[28] Setelah meneliti segala keterangan Affidavit-Affidavit khususnya daripada Pegawai Penyiasat Predikat dan AMLATFPUAA, di atas imbangan kebarangkalian, Mahkamah memutuskan Pemohon/Pendakwa Raya telah berjaya membuktikan kesemua harta yang dinyatakan dalam
C Notis Usul iaitu wang RM90,000.00 dan Kereta Honda CRZ adalah hasil harta yang diperolehi daripada aktiviti haram (kegiatan dadah) di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang mana merupakan satu kesalahan serius/berat di bawah Jadual Kedua Akta 613.

[97] This is a clear finding that the cash of RM90,000 seized from the
D appellant was proceeds of unlawful activity under s. 56(2)(a)(iii) of the AMLATFPUAA 2001.

[98] It is therefore misconceived for the appellant to contend that the High Court erred in law when it failed to consider or appreciate the defence put forward by the appellant to refute the prosecution's application. We observe
E that the High Court did state that the appellant failed to adduce any documentary evidence to refute the same, which, by reading the grounds of judgment of the High Court would plainly mean that despite the averments and statements by the appellant, these were made without adequate and relevant substantiation. This is certainly not a case where based on all
F evidence, there was an equal probability of both the appellant's and the respondent's case being true.

[99] For completeness on the status of the cash of RM90,000, we should add that the appellant had also, as mentioned earlier, relied on the affidavit by the appellant's uncle which had sought to explain the provenance of the
G said RM90,000. At the same time his uncle, Datuk Seri Pulainthiran a/l Vendasamy had also claimed as a third party as being entitled to the said RM90,000, which the appellant contended the High Court had failed to consider the evidence in totality which amounted to a misdirection which severely prejudiced the appellant's defence.

H **[100]** Section 56 of the AMLATFPUAA 2001, as can be seen above, starts with the important words "Subject to section 61". Section 61 concerns *bona fide* third parties. And not unrelated to this, s. 56(2) itself provides that before making the forfeiture order, the High Court must be satisfied not only that the property in question meets the preconditions in s. 56(2)(a), for example
I it being proceeds of an unlawful activity, but also it does not infringe s. 56(2)(b) in that there is no purchaser in good faith for valuable consideration in respect of the property.

[101] The appellant's uncle claimed to be a *bona fide* third party who was entitled to the cash of RM90,000 seized by the Customs authorities from the appellant. Section 61 provides as follows:

> *Bona fide* third parties
>
> 61. (1) The provisions in this Part shall apply without prejudice to the rights of *bona fide* third parties.
>
> (2) The court making the order of forfeiture under subsection 28L(1) or section 55 or the judge to whom an application is made under subsection 28L(2) or 56(1) shall cause to be published a notice in the *Gazette* calling upon any third party who claims to have any interest in the property to attend before the court on the date specified in the notice to show cause as to why the property shall not be forfeited.
>
> (3) A third party's lack of good faith may be inferred, by the court or an enforcement agency, from the objective circumstances of the case.
>
> (4) The court or enforcement agency shall return the property to the claimant when it is satisfied that –
>
> (a) the claimant has a legitimate legal interest in the property;
>
> (b) no participation, collusion or involvement with respect to the offence under subsection 4(1) or Part IVA, or a terrorism financing offence which is the object of the proceedings can be imputed to the claimant;
>
> (c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, or if he had knowledge, did not freely consent to its illegal use;
>
> (d) the claimant did not acquire any right in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property; and
>
> (e) the claimant did all that could reasonably be expected to prevent the illegal use of the property.

[102] It is for the third party to establish his entitlement to the said property *vis-à-vis* all of the items in (a) to (e) of s. 61(4), on a balance of probabilities, as so held by the Court of Appeal in *Noor Ismahanum Mohd Ismail v. PP* (*supra*), as follows:

> [20] Abang Iskandar PK (ketika itu) dalam kes *PR v. Lau Kwai Thong* (MTSA Kes No: 44-20-2008 – unreported) telah memberikan pandangan bahawa pihak ketiga yang menuntut harta yang disita dalam prosiding di bawah s. 61 AMLATFA hendaklah membuktikan kesemua perkara di bawah s. 61(4) perenggan (a) hingga (e). Mahkamah ini bersetuju dengan pandangan tersebut dan ingin menambah bahawa beban pembuktian adalah atas bahu pihak ketiga yang membuat tuntutan untuk membuktikan atas imbangan kebarangkalian bahawa mereka adalah

penuntut pihak ketiga yang suci hati. Untuk membuktikan bahawa mereka adalah penuntut yang suci hati maka mereka hendaklah mengemukakan keterangan bagi memenuhi kehendak-kehendak seperti diperuntukkan di bawah perenggan (a) hingga (e) tersebut. Sekiranya mahkamah berpuas hati bahawa perkara-perkara tersebut terbukti dan telah dipenuhi, harta yang dituntut bolehlah dikembalikan kepada penuntut pihak ketiga yang suci hati tersebut.

[103] However, as stated earlier, the third party did not produce any documents to support his averment that it was he who gifted the cash of RM90,000 to his nephew. No relevant bank statements, no documents evidencing any communication on such gift or any other. The third party merely averred in respect of his status and that he was a successful businessman. It could be said that even if it could be assumed that the third party could indeed afford to bestow a gift in the form of a cash sum of RM90,000 to the appellant, which source could also be assumed not to be illegitimate, there was still absolutely no evidence that the third party had in fact gifted that cash of RM90,000 to the appellant.

[104] As such, this court finds no reason to interfere with the findings made by the High Court in respect of the third-party claim, as follows:

[34] Pihak Ketiga hanya mengemukakan keterangan tentang pangkat dan juga dirinya sebagai seorang Businessman yang berjaya tanpa mengemukakan apa-apa keterangan yang berbentuk dokumentari seperti Penyata Bank atau sebarang bukti yang menunjukkan bahawa wang tersebut merupakan harta sah miliknya yang telah dihadiahkan kepada Responden dan bukannya harta daripada aktiviti haram pengedaran dadah. Pihak Ketiga telah gagal mewujudkan inferens bertentangan dengan versi Pemohon bersandarkan hasil siasatan Pegawai AMLA dan Predikat.

[35] Berdasarkan keterangan yang ada, Mahkamah berpuas hati bahawa pihak Ketiga/Penuntut bukanlah seorang yang suci hati dan gagal membuktikan kelayakan beliau bagi menuntut harta-harta yang telah disita atas imbangan kebarangkalian seperti diperuntukkan di bawah Subseksyen 61(4)(a) hingga (e) Akta tersebut, secara spesifiknya, Subseksyen 61(4)(c) Akta tersebut.

[105] The High Court was as such correct in its assessment of the evidence of the appellant, and in its dismissal of the claim by the third party in relation to the RM90,000 cash.

Whether Cautioned Statements Of The Appellant Inadmissible

[106] There is one other issue raised by the appellant in this appeal, and this was the assertion of the illegal inclusion or use of the appellant's cautioned statement recorded under s. 37B(1)(b) of the DDA 1952 dated 14 October 2021, which was exhibited in the affidavit sworn by investigating officer (predicate offence). The appellant said this was contrary to s. 37B(1) of the

DDA 1952 which states that the cautioned statement of an accused shall only be used and be admissible at the trial where the accused is charged with any offence under the DDA 1952.

[107] As such, according to the appellant, any reference to the appellant's cautioned statement under s. 37B(1) of the DDA 1952 was therefore illegal and highly prejudicial to the appellant and ought to be expunged from the respondent's affidavits. Without the said cautioned statement, the respondent had failed to discharge the burden of proof, on a balance of probabilities, that the properties in question were proceeds of the offence of trafficking in dangerous drugs under s. 39B of the DDA 1952. The High Court had therefore misdirected itself in ruling that the appellant had committed an 'unlawful activity' under the AMLATFPUAA 2001.

[108] The respondent contended otherwise, by advancing the argument that the use of such cautioned statements is permitted under s. 71 of the AMLATFPUAA 2001 as well as s. 40 of the same Act.

[109] We agree with the respondent.

[110] As stated earlier, two statements were recorded from the appellant. One under s. 37B(1)(b) of the DDA 1952 not long after his arrest and the other under s. 32 of the AMLATFPUAA 2001, more than a year later.

[111] Now, in respect of the statement taken under the DDA 1952, the relevant parts of s. 37B states the following:

> Admission of statement in evidence
>
> (1) Where any person is charged with any offence against this Act any statement, whether such statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after such person is charged and whether in the course of a police investigation or not and whether or not wholly or partly in answer to questions, by such person to or in the hearing of any police officer of or above the rank of Inspector or any senior officer of customs and whether or not interpreted to him by any other police officer or senior officer of customs or any other person concerned or not in the arrest, shall notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence and, if such person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit: …

[112] In other words, the above says that a statement recorded from a person under the DDA 1952 who is charged with an offence under the same Act is admissible in evidence at his trial. As such the argument of the appellant is that the statement could not be used for any other purpose such as to support an application for a forfeiture under s. 56 of the AMLATFPUAA 2001.

[113] However, the plain words of s. 71 of the AMLATFPUAA 2001 mean otherwise. It reads:

> Where the Public Prosecutor or any enforcement agency has obtained any document or other evidence in exercise of his powers under this Act or by virtue of this Act, such document or copy of the document or other evidence, as the case may be, shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any written law.

[114] Thus, reference to the obtaining of documents by any enforcement agency pursuant to the powers under the AMLATFPUAA 2001 or by virtue of that same Act means that any enforcement agency – in this case, the Royal Malaysian Customs, which has obtained any document or even a copy of document – which should include cautioned statements – may admit the same in evidence when the offence falls under the AMLATFPUAA 2001, or the offence is "by virtue of this Act" any of the "serious offences" as defined in the Second Schedule of the AMLATFPUAA 2001 (which thus includes s. 39B of the DDA 1952), and produce those documents to prove the predicate and money laundering offences under the AMLATFPUAA 2001, notwithstanding anything to the contrary in any written law. In the instant case, that written law would include the above-stated s. 37B(1) of the DDA 1952.

[115] A similar provision is found in the AMLATFPUAA 2001, in respect of the status of a statement recorded under s. 32 of the same Act. Section 40 of the AMLATFPUAA 2001 states thus:

> Statement to be admissible
>
> 40. The record of an examination under paragraph 32(2)(a), any property, document or information produced under paragraph 32(2)(b) or any statement under paragraph 32(2)(c) shall, notwithstanding any written law or rule of law to the contrary, be admissible as evidence in any proceedings in any court for, or in relation to, an offence or any other matter under this Act or any offence under any other written law, regardless whether such proceedings are against the person who was examined, or who produced the property, document or information, or who made the written statement on oath or affirmation, or against any other person.

[116] More recently, this court in *Liew Ket Boh & Anor v. PP* [2024] 3 CLJ 563 held that s. 71 of the AMLATFPUAA 2001 would admit in evidence a statement recorded under s. 112 of the Criminal Procedure Code. Especially pertinent is that the same could be admitted as evidence in a forfeiture proceeding under s. 56 of the AMLATFPUAA 2001, just like presently. On top of that, reference was also made to the decision of the Federal Court in the case of *PP v. Awalluddin Sham Bokhari* [2018] 1 CLJ 305 which had considered s. 40 of the AMLATFPUAA 2001.

[117] The following passages from the judgment of the Court of Appeal in *Liew Ket Boh & Anor v. PP* are self-explanatory: A

> [60] In our respectful view, the s. 112 of the CPC statements of Jazrul, Wilton and Mariana can be used in a s. 56 proceedings for the following reasons. The references in s. 113 are all associated with a criminal trial such as "accused", "witness", "impeachment proceedings" and "identification parade". Thus, a holistic reading of all the limbs of s. 113 of the CPC points to the conclusion that a s. 112 of the CPC statement is barred from being used by the prosecution in a criminal trial only. It bears repeating that a s. 56(1) proceeding under the AMLATFPUAA is not a trial against any accused person. It is a *quasi*-criminal proceeding against proceeds derived from unlawful activity only. B C
>
> [61] Furthermore, s. 71 of the AMLATFPUAA is drafted widely and contains the words notwithstanding anything to the contrary in any written law. It allows any "document" or "evidence" obtained by the Public Prosecutor or enforcement agency to be used in a s. 56(1) proceeding. In the instant case, the AMLATFPUAA investigating officer using her powers under the said Act, accessed all the relevant documents and evidence including that obtained by the predicate offence investigating officer as stated in her affidavit. The information collected by the predicate investigating officer through the s. 112 of the CPC statements of Jazrul and Wilton were repeated in his s. 32 of the AMLATFPUAA statement. In the premises, in our view, the information contained in the s. 112 of the CPC statements recorded by the predicate offence investigating officer clearly fall within the ambit of s. 71 of the AMLATFPUAA. D E
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> [62] In addition, given that the AMLATFPUAA is a special law governing matters connected with the offence of money laundering and forfeiture proceedings, the general provision of s. 113 of the CPC should yield to s. 71 of the former. In any event, s. 71 is only concerned with admissibility of documents and evidence. As to the weight to be attached to such documents and evidence, it entirely up to the first instance court to consider the credibility and reliability of them. Therefore, we find no error on the part of the learned High Court Judge when His Lordship considered the s. 32 AMLATFPUAA statement and affidavit of the predicate offence investigating officer that repeated the contents of the impugned s. 112 of the CPC statements. F G
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> [63] We are also fortified in reaching this conclusion by the decision in the Federal Court case of *PP v. Awalluddin Sham Bokhari* [2018] 1 CLJ 305. The Federal Court considered s. 40 of the AMLATFPUAA which reads as follows: H
>
> > 40. Statement to be Admissible The record of an examination under paragraph 32(2)(a), any property, document or information produced under paragraph 32(2)(b) or any statement under paragraph 32(2)(c) shall, notwithstanding any written law or rule of law to the contrary, be admissible as evidence in any proceedings I

A in any court for, or in relation to, an offence or any other matter under this Act or any offence under any other written law, regardless whether such proceedings are against the person who was examined, or who produced the property, document or information, or who made the written statement on oath or affirmation, or against any other person.

B [64] The Federal Court held that any statement of police officers under s. 32(2) is not hearsay by virtue of s. 40 as it was acquired in the course of investigation. The relevant passage is as follows:

[33] Any property, record, report or document obtained by the investigation officer pursuant to s. 32(2) of the Act are, by virtue C of s. 40 of the Act, admissible as evidence in any proceedings in any court for or in relation to an offence or any other matter under the Act or any offence under any other written law. The Court of Appeal was clearly in error in holding that para. 32 of the investigation officer's affidavit was "purely hearsay". It also erred in ruling that the learned trial judge committed an error in relying D "on an affidavit which is not worth the paper it is written on". What had been deposed by these two senior police officers in their affidavits, which were based on their personal knowledge acquired in the course of investigation under s. 32 of the Act, could not be said as purely hearsay.

E [65] For the same reasons, we are of the view that the information contained in the statement of the predicate offence investigating officer (Sarjan Zairey Lee) recorded under s. 32(2) of the AMLATFPUAA by ASP Nor Hazwani that was considered by the High Court is not hearsay as argued by the counsel for the appellants.

F **[118]** As such, just like a s. 112 statement in *Liew Ket Boh & Anor v. PP* (and that under s. 32 of the AMLATFPUAA 2001 in *PP v. Awalluddin Sham Bokhari*), the statement recorded in the instant case from the appellant under s. 37B of the DDA 1952 would be evidence admissible under ss. 71 and 40 of the AMLATFPUAA 2001 through the affidavit of the investigating G officer for the predicate offence. So, too, the statement taken from the appellant under s. 32 of the AMLATFPUAA 2001, as exhibited in subsequent, the affidavit of the investigating officer would be admissible under the same ss. 71 and 40.

[119] These statements were obtained under ss. 71 and 32 of the H AMLATFPUAA 2001 pursuant to an investigation (hence necessarily involving examination into an unlawful activity) and later relied on by the respondent in the forfeiture proceedings in accordance with s. 56(1), which as stated by this court is not a trial against any accused person but is a *quasi*-criminal proceeding (as so described in *Liew Ket Boh & Anor v. PP*) I against the proceeds derived from an unlawful activity.

[120] Having said all that – to the effect that these cautioned statements are admissible for the purposes of the forfeiture proceedings – we should nevertheless highlight that the High Court did in fact state in its grounds of judgment that its consideration of the forfeiture application which resulted in the granting of an order for forfeiture did not include the statements recorded from the appellant. This was what was stated:

> [20] Mahkamah ini telah meneliti segala keterangan-keterangan yang telah dikemukakan pihak Pemohon dan Responden melalui Affidavit-Affidavit masing-masing. Mahkamah tidak mengambil kira pengakuan Responden seperti di dalam Percakapan Beramarannya (Cautioned Statement) yang telah dirakamkan di bawah Akta Dadah Berbahaya dan AMLATFPUAA kerana ia akan memprejudiskan Responden kerana isu kerelaan membuat pernyataan pengakuan tersebut tidak dibuktikan.

[121] Thus, the High Court did not even take the two statements recorded from the appellant into account in considering the forfeiture application, and still concluded, in our view correctly, that the pre-conditions of s. 56(2) had been fulfilled to justify the granting of a forfeiture order on the basis of all other evidence.

[122] In the upshot, this complaint of the appellant is also devoid of merits.

Conclusion

[123] In light of the foregoing reasons, we find no merit in the issues raised by the appellant to support his appeal. We find that the High Court was not wrong in granting the forfeiture order in respect of the Honda CRZ and the cash sum of RM90,000, which decision does not warrant appellate interference. Accordingly, we affirm the decision of the High Court and dismiss this appeal.